Re: In the Matter of Rules and Regulations
Implementing the Telephone Consumer Protection Act
(TCPA) of 1991

CG Docket No. 02-278

Comments of:
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We are sure that the FCC has received many comments about telemarketers. There is no question that the Commission has heard about complaints that the TCPA is widely ignored and often violated. We at C.A.T.S. believe that if the law is to be re-written it must have three basic principles:

1. It must benefit the consumer
2. It must benefit the industry
3. It must be " self-enforcing"

Lets talk about the term " self-enforcing." By that we mean that the Commission has to do little to enforce the law. Examples of " self-enforcing" laws include sales taxes (the tax is collected by the business and not the government), technical standards such as the rule that so called radio scanners cannot be manufactured to hear the cellular radio services, etc. With these thoughts in mind here are our suggestions.

The first thing the Commission should do is create a national " do-not-call" (DNC) list. It should be primarily accessed by the Internet in order to keep costs down. This should be a joint effort between the FCC and FTC. There should be spot checks (by mailing out letters, and in some cases calling, on a random basis) to insure that the list is not abused. The national DNC list should work in conjunction with state lists and not over ride them. If the states develop confidence with the FCC/FTC DNC, they will pass laws to eliminate the state lists in time.

This benefits the consumer by giving them a one-stop place to stop unwanted telephone solicitations. If businesses want to call consumers then they will have to offer something to the consumer to get him/her to accept the calls. For example, business X may offer me a payment or a discount if I accept their calls. **Under the proposed**

FCC/FTC rules a company will not be allowed to refuse to do business with the consumer or create a barrier to that business if a consumer refuses to sign a waiver of the rules.

This also benefits the industry. With sales rates in the single digits, telemarketers would not be calling consumers that obviously do not want to be called. While the number of calls would drastically diminish, the sales closing ratio would rise dramatically thus actually increasing profits.

The FCC needs to define a new class of equipment called " telephone broadcasting equipment", and create some technical and procedural changes to make adherence to the DNC list self enforcing. This new class of equipment would include predictive dialers and so called " blast faxers." The equipment should meet technical standards such as a maximum abandonment rate. For example, if the FCC decided that the maximum abandon rate should be 2% then the equipment manufacturers, in order to get FCC type acceptance, would have to limit the rate to 2%. In short, an unscrupulous telemarketer could not program his equipment to a higher rate even if he wanted to, thus making the rule " self enforcing." Other technical standards could deal with caller-ID standards and the ability to block caller-ID.

The next step is to require that anyone that hooks up equipment to the public switched network (PSN) be required to have a " telephone broadcast license" issued by the Commission, and give a copy to the Telephone Company before service can begin. Telephone companies would be required by FCC rules to have a copy of a valid license before they could provide service.

Here the FCC can learn from the successful licensing practices used in the amateur radio service. The Commission should set up volunteer examiners (VE) to issue the licenses. We are sure that the American Teleservices Association and the Direct Marketing Association would be more than happy to be VE's and make a small profit from the license issue. The 'test' for the license should be a simple form that is mailed to the prospective licensee and they may use any reference material during the test. The purpose of the test is to demonstrate that the licensee knows the rules. The 'test' procedure could be similar to the FCC's old third class restricted radio operator's license, where no actual testing was done. In essence, it should be no more than 10 questions. Licensing should be fast, cheap and easy, all of which encourages self-enforcement.

By licensing telemarketing firms and requiring a license before " telephone broadcast equipment" can be connected to the PSN, the industry benefits in several ways:

1. Companies have an incentive to follow the rules. Violators could have their license revoked for repeated violations.
2. By requiring a license be posted before a company can hook up to the PSN, fraudulent operators would have to register with authorities or not be able to connect their equipment to the network. This benefits the consumer and the industry as well.
3. Illegal use of the equipment could be stopped much faster if a license was required to connect to the PSN. As an example, Fax.com routinely ignores FCC rules and fines, and the Commission seems powerless to stop them. If Pac Bell had the authority, under FCC rules, to refuse service to them because their license was revoked, the faxes would stop.

The Private Right of Action in the TCPA needs to be better defined as well. We at C.A.T.S. believe that a company should have 15 days to get a consumer on a " do-not-call" list and should have no " second chance" to call that consumer after he tells them to stop calling. The " affirmative defense" should be eliminated, as it is often abused. We believe (as does most of the industry) that a company should have 30 days to comply with a request for the company's written " do-not-call" policy. If a company fails after 30 days to provide its written policy, a consumer should prevail in court. Calling persons on the National DNC list should be included in the Private Right of Action as well.

One tactic that telemarketers use to avoid lawsuits is to threaten massive counter suits for a simple small claims court filing. These so called, counter, suits should be banned under FCC rules unless the defendant can show that suits were malicious, and that there were multiple lawsuits filed. No consumer should worry about losing his house because they filed a $500.00 small claims action.

Finally the FCC should clarify the rules about the private right of action clauses in the TCPA. For example, the FCC should (as many judges have held) that the phrase "an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation" in 47 U.S.C. 227 (3)(A) should include the regulations in CFR 64.1200. The Commission has, in the past, "leaned" toward that definition by its rulings. It needs to make clear that "the regulations" include the above mentioned section as well as the new standards it seeks to impose are covered under the Private Right of Action that the Congress authorized. The threat of civil class actions will keep the industry honest and be a benefit to consumers as well as the industry since the "bad actors" are regulated out of business (as they should be.) Private rights of action are another example of "self-enforcement."

As we have said before "The FCC should work smarter, not harder" when it comes to enforcing the TCPA. Time has shown that industry "self-regulation" does not work, but properly set up, "self-enforcement" will. The current system does not work and we at C.A.T.S. do not want to see it replaced by an equally failed system.

Respectfully submitted,

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